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ABSTRACT

This brief paper summarizes requirements of the Americans with Disabilities Act (ADA) of 1990 related to employment of people who have a brain injury. The following topics are addressed: what is meant by a brain injury; implications of the ADA for individuals who have sustained a brain injury (such as the importance of identifying essential job functions); possible accommodations for an applicant or employee who has sustained a brain injury; and tips for on-the-job training. Accommodations are suggested for the employee selection process and for enhancing productivity on the job. In selecting an accommodation the importance of individualization is stressed, since support needs of such individuals may vary widely. A listing of seven resources is provided. (DB)

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Working Effectively with Employees Who Have Sustained a Brain Injury

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What is a Brain Injury?

The brain is a complex organ, the focal point of our capacities to: think; receive, understand language and respond; remember; feel and express emotions; and more. The brain is protected by the bones of the skull and by an intricate system of membranes, fluids and blood vessels. But, like anything else, the brain can be damaged.

Brain injury often results from a trauma to the head and/or brain. Traumatic brain injury can result from a bump to the head such as in a motor vehicle crash. Other conditions that can result in a brain injury include: heart attacks, aneurysms, chemical and drug reactions, lung problems, infections, lack of oxygen to the brain, and a variety of other causes. In most cases, an injury sustained as a result of one of these mechanisms will result in an increased need for support in the following areas: physical capacities (the way we move and manipulate things); behavioral and emotional capacities (the way we act, tolerate, and feel); and cognitive capacities (the way we think and process information).

A brain injury is different from many other disabilities because the onset of the injury can be traumatic and occur suddenly. Everyday people, like you and your family, are susceptible to brain injury at any time. This brain damage can result in permanent, irreversible damage which can effect tasks and things you have typically done in the past with great ease. There is no cure for brain injury and prevention is the best option for minimizing its occurrence.

Implications of the ADA for Individuals Who Have Sustained a Brain Injury

The Americans with Disabilities Act guarantees the rights of individuals with disabilities. The Employment Provisions (Title I) hold interesting implications for individuals who have sustained a traumatic injury such as a brain injury. In most cases, recipients of a brain injury have held employment prior to their injury. Following a period of rehabilitation to increase capacities often effected by the injury, that employee may desire to return to his/her prior position, be reassigned, or develop his/her career path in other ways. For those individuals who sustain a brain injury prior to establishing a work history, the ADA still holds the same rights of access to their communities and employment.

If a person who has sustained a brain injury applies for a job with your company, reviewing his/her past education and experience will let you know if he/she is minimally qualified. Having previously identified *essential job functions* will also assist you in determining whether or not the individual is qualified, with or without a reasonable accommodation. If an employee sustains a brain injury after having been at work, the same strategies will assist you in determining this person's current qualifications for re-employment. In cases of re-employment, involvement of the employer in the rehabilitation process is critical. You will be able to play a large role, given the employee permits your involvement, in assisting the rehabilitation team in knowing exactly what that employee was like prior to his/her injury, what his/her job entailed, and what *essential job functions* he/she will be required to perform upon returning.

Accommodating an Applicant or Employee Who Has Sustained a Brain Injury

Employee Selection Process:

As in all applicant cases, your main priority, regardless of disability, should be to determine whether an applicant has the necessary skills, experience, education, or other background to successfully perform the essential functions of the job. Your first step is going to be to determine what are the components in applying for, obtaining, maintaining a job, and being promoted within your company. Once you have clearly identified the different human resources activities an applicant or employee must go through, you will be

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able to determine possible accommodations along the way which may make the process more accessible for a wider variety of applicants/employees.

However, the reasonable accommodation obligation applies to an individual as the need arises. The ADA does not require you, as an employer, to make general adjustments and modifications for a wide variety of employment situations.

When you advertise an open position, **make sure the qualifications required and application directions are stated clearly and concisely**. This will assist an individual who may have cognitive support needs in processing the information, allowing him/her to make a clear decision as to whether or not s/he may minimally qualify for the job.

The first *rule of thumb* when attempting to determine ways to increase the accessibility of human resources policies and practices within your company and accommodate an individual who has sustained a brain injury, is to **recognize that not all brain injuries result in the same support needs**.

For example...one individual may have no difficulty reading an application form, while another may have a vision problem resulting from his/her brain injury which affects his/her ability to read.

Ask the individual how s/he would prefer to meet the requirements of a given process. For example, if a right-handed applicant has limited use of his/her right arm as a result of the brain injury some strategies may include:

- Allow the person to take the application home and have assistance filling it out;
- Mail the application to the candidate who requests it;
- Offer the services of someone in the office to assist in completing it.

Some effective human resources strategies to use when interviewing with an applicant who has sustained a brain injury include:

- Give clear concise directions;
- Ask if s/he has an aide or assistant who might make the interview process more comfortable and aid him/her in presenting his/her skills and qualifications for the job;
- Follow-up spoken communications (phone calls, dialogues, etc...) with written communication to assist a person who may have memory support needs (i.e. directions, appointment times, etc...);
- Make sure your interviewing site is accessible to aid the individual who may have physical support needs resulting from his/her injury.

When you are conducting an interview be yourself. Disability does not mean inability. Treat the applicant who has sustained a brain injury as you would any other applicant. To increase your comfort level and accommodate the potential support needs of the applicant who has sustained a brain injury be mindful of:

- Speaking clearly and concisely;
- Repeating a statement that an applicant has told you is unclear or unintelligible;
- Decreasing distractors in the room (i.e. phone calls, interruptions, etc...);
- Doing a walk-through or a tour to make sure it is accessible, prior to interview;
- Decreasing the number of introductions made or reassure the applicant that s/he will meet quite a few people and it may take some time to get to know them all;
- When explaining tasks or jobs, breaking down each into steps which may be easier to remember or sequence.

(Remember, not all applicants will need these accommodations; don't forget to ask the applicant what may assist him/her).

Enhancing Productivity on the Job:

Why do we use a chair to reach dishes on a high shelf? Why do we use automatic pencil sharpeners? Why do we use ergonomically designed office chairs?

Simply put, these adaptations make a task easier and may save time. These are examples of simple accommodations we make to be more productive and ease our workload. The ADA asks employers to *reasonably accommodate* the limitations imposed by a disability. Reasonable accommodation is defined as modification or adaptation of a job, employment practice, or work environment that makes it possible for a qualified person with a disability to be employed. The law states that employers **must make accommodations from the first point of contact with a person with a disability** including: the application screening process; on the job; in training; on the worksite; and when considering promotions and layoffs. If job duties change, new accommodations may need to be made. The ADA requires an employer to accommodate unless doing so would cause an *undue hardship*.

If an employer finds that the cost of an accommodation would impose an undue hardship and no funding is available from another source, an applicant or employee with a disability should be offered the option of paying for the portion of the cost that constitutes an undue hardship, or of providing the accommodation.

Selecting an Accommodation:

The employee candidate who requests an accommodation has lived and perhaps worked while having the disability. He/she may already have identified what accommodations work best for him/her. **Given that support needs are individualized based on the severity of a brain injury, so must the accommodation**. The process of identifying and selecting an accommodation should be a dialogue between the employee and the employer. The accommodation may be able to be provided using easily identified supports (low tech) or may require the use of more intensified and expensive supports (high tech).

Identifying an accommodation for an individual who has sustained a brain injury could potentially include a variety of support strategies including: memory log

books; wheelchair-accessible facilities; job sharing or modified shortened work schedules; job checklists and cues; tools to assist the person in tracking while reading such as a ruler or piece of paper with a window cut in it; smaller job steps to improve sequencing; raised desks or tables to allow for a wheelchair; Teletype (TTY) or Text Telephone (TT) if the person has difficulty with speech or hearing; ramps; handrails; computer keyboard guards; to name only a few accommodations.

Tips for On-The-Job Training:

All employees, regardless of disability, need the same introduction and orientation to a job and initial training. Determining the learning style of any new employee is a good human resources practice which maximizes inservicing and training provided. Ask the employee whether s/he learns best from strictly verbal instruction, or a combination involving hands-on, written, and verbal instruction.

Any new employee has his/her own unique way of setting up a work station or organizing job tasks and supplies. Allowing the employee with a brain injury this flexibility can promote increased performance as long as job quality and quantity is not negatively affected.

In some cases, individuals with more severe disabilities may be represented by a rehabilitation agency or employment program which provides specialized support and technical assistance to employers surrounding the employment of people with disabilities. Although these services can benefit the employer, they should not take the place of internal training, orientation, inservicing, and promotional strategies and techniques utilized by your company. The key to successful on-the-job training is integrating, investing, and involving the new employee to the greatest degree possible without stigmatizing the person who may have sustained a brain injury or any other disability.

Resources

There are a number of resources that can assist employers and people who have sustained a brain injury. It is important to remember to begin all discussion of accommodation with the employee. If additional information is needed, consult the following organizations:

ADA Regional Disability and Business Technical Assistance Center Hotline - (800) 949-4232 (voice/TTY).

The Equal Employment Opportunity Commission, 1801 L Street, N.W., Washington, DC 20507, 800-669-4000 (Voice) to reach EEOC field offices; for publications call (800) 800-3302 or (800)-669-EEOC (voice/TTY).

Ability Magazine / Jobs Information Business Service, 800/453-JOBS, 11682 Langley, Irvine, California 92714

Provides an electronic "classified" system which allows employers to recruit qualified individuals with disabilities and people with disabilities to locate employment opportunities. Through magazine, provides information on locating qualified readers, interpreters, personal assistants and assistive devices, and overcoming architectural, communications, and transportation barriers, performing job analysis, job modification, and job restructuring.

Association for Persons in Supported Employment (APSE), 800/282-3655, 5001 West Broad Street, Suite 34, Richmond, Virginia 23230

International association which can provide resources and information on how to utilize subsidized "supported employment" programs. Association also provides referral to state chapters which can then provide referral to local supported employment programs in your locality.

Job Accommodation Network (JAN), 800/526-7234, West Virginia University, PO Box 6080, Morgantown, West Virginia 26506-6080

Employers talk with Human Factors Consultants about an individual with a disability (not limited to brain injury). The consultant will search JAN's database for information related to the functional requirements of the job, the functional limitations of the employee, environmental factors, etc. The search will provide information about similar situations, names and addresses of appropriate resources.

National Head Injury Foundation, Inc., 202/296-6443, 1776 Massachusetts Avenue, NW, Suite 100, Washington, DC 20036-1904.

Provides informational services and resources on traumatic brain injury. Offers employment-related publications on vocational rehabilitation, job seeking skills, job placement, return-to-work and employment issues, and adaptive work behaviors for victims of brain injury. Local associations can be accessed for local information.

State Vocational Rehabilitation Office

State agency which provides vocational rehabilitation services to individuals with disabilities. Services can include: counseling, advocacy, job training, job placements, and a variety of additional support services including continuing, adult and post-secondary education. For the Office of Vocational Rehabilitation Services in your State, consult a phone directory.

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OTHER TITLES IN THIS *IMPLEMENTING THE ADA* SERIES ARE:

- Working Effectively with People who are Deaf or Hard of Hearing
- Working Effectively with People who are Blind or Visually Impaired
- Working Effectively with Persons who have Cognitive Disabilities
- Workplace Accommodations for Persons with Musculoskeletal Disorders
- Working Effectively with Employees who have Sustained a Brain Injury
- Employing and Accommodating Workers with Psychiatric Disabilities
- Employing and Accommodating Individuals with Histories of Alcohol and Drug Abuse
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- Accommodating the Allergic Employee in the Workplace
- Causes of Poor Indoor Air Quality and What You Can Do About It
- Working Effectively with People with Learning Disabilities
- Working Effectively with Individuals who are HIV-Positive

These and other informational brochures can be accessed on the World Wide Web at:
www.ilr.cornell.edu/ped/ada

For further information about publications such as these, contact the ILR Program on Employment and Disability, Cornell University, 102 ILR Extension, Ithaca, New York 14853-3901; or at ***607/255-2906*** *(Voice),* ***607/255-2891*** *(TTY), or* ***607/255-2763*** *(Fax).*

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